IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4619 OF 2003

State of Maharashtra & Ors. ...Petitioners

Versus

Rajendra Sahebrao Jagtap ... Respondent.

Mr. S.R. Nargolkar, Assistant Government Pleader, for the Petitioners

Mr. S. Prabhu with Mr. N.V. Bandiwadekar for the Respondent.

CORAM: V.G. PALSHIKAR, Ag.C.J., & SMT. NISHITA MHATRE, J.
DATE: FEBRUARY 2, 2006.

P.C.:-

1. By this petition, the petitioners have challenged the order passed by the Maharashtra Administrative Tribunal allowing the original application of the employee of the Police Department holding that enquiry cannot be conducted by the officer/s belonging to the Police Department itself. The Tribunal did not, while recording the said finding, consider the application on merits pertaining to particular charges levelled against a departmental candidate. The question is as

to whether such enquiry is to be conducted or not as considered in judgment in the case of *State of Maharashtra and Anr. v. Dilip Anant Surve* [2005 (3) Mh.L.J. 1998]. It has been clearly laid down by this Court that exercise of power under Articles 162 and 309 is distinct and for the purpose of making rules under Article 309, power under Article 162 is to be exercised. It was, therefore, held that the power to hold departmental enquiry flows from the power to take disciplinary action.

2. That being the position, the Maharashtra Administrative Tribunal was obviously wrong in allowing the application and setting aside the departmental enquiry. As a result, this writ petition has to be allowed and the order impugned therein is to be set aside and the matter is remanded for decision on merits. More than three years have passed since the order has been made. As a result of the order, the employees concerned were reinstated, some of whom have retired and some still continue in service.

3. The impugned order in this petition is set aside. The original application is remitted back to the Maharashtra Administrative Tribunal for adjudication in accordance with law. *Status quo* as of today shall be continued for a period of eight

weeks from today and the original applicant shall be at liberty to make interim application for continuance or grant of interim relief, as may be necessary. The Tribunal shall decide the matter as early as possible and preferably within six months from the date of receipt of this order. The petition is disposed of accordingly. Rule is discharged.